

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 CHRIS CARLSON, individually and
12 on behalf of all persons similarly
13 situated,

14 Plaintiff,

15 v.

16 HOME DEPOT U.S.A., INC. and THE
17 HOME DEPOT, INC.,

18 Defendants.

19 CASE NO. C20-1150 MJP
20 ORDER ON STIPULATED
21 MOTION TO AMEND THE
22 PARTIES' CLASS SETTLEMENT
23 AGREEMENT

24 This matter comes before the Court on the Parties' Stipulated Motion to Amend the
25 Parties' Class Settlement Agreement. (Dkt. No. 148.) Having reviewed the Motion and all
26 supporting materials, the Court GRANTS the Motion.

27 According to the Parties, after they distributed payments to the Settlement Class
28 Members in this action, but before distributing the unclaimed portion of the settlement fund to
29 the cy pres recipient (The Homer Fund), they learned that "certain individuals who were
30 intended to be treated as Settlement Class Members did not receive notice of the settlement or an

1 opportunity to participate in the settlement.” (Mot. at 2.) The Parties do not identify how many
 2 people were not provided notice (the “Additional Participants”). But they ask the Court to
 3 approve the following:

- 4 1. The Parties wish to treat the Additional Participants as if they had been included
 in the settlement process.
- 5 2. The Parties will direct the settlement administrator to send all of the Additional
 Participants notice of the settlement in substantially the same form provided to the
 original Settlement Class Members.
- 6 3. The Additional Participants will be afforded the opportunity to opt out of the
 settlement. If they do not opt out, they will be bound by the settlement and receive
 a payment calculated as if they had originally been participants in the Settlement
 Class.
- 7 4. The cost of administering the process described above, and the value of any
 payments sent to Additional Participants, will be paid out of the Unclaimed
 Funds. The payments to the Additional Participants will be calculated on the same
 basis and in the same manner as the payments to the original Settlement Class
 Members. To the extent the Unclaimed Funds are insufficient to cover the cost of
 this process, Defendant will cover the cost to the extent it does not exceed
 \$123,632. The Parties have jointly determined this amount will be sufficient to
 provide for full and proper payment to each of the Additional Participants.
- 8 5. Except as specifically identified above, all of the other terms and conditions of the
 Parties’ Original Settlement Agreement remain valid and are binding with respect
 to the obligations described above. All Additional Participants who do not timely
 opt out will be bound by the same release of claims described in the Original
 Settlement Agreement. To the extent that any of the payments to the Additional
 Participants are unclaimed after 120 days, those payments will be sent to The
 Homer Fund as the cy pres beneficiary.

17 (Mot. at 2-3.)

18 The Court finds that the Parties’ proposal is largely acceptable. First, the proposed
 19 amendment is consistent with the Settlement Agreement, which allows for mutually-agreed-upon
 20 “technical and process amendments or modifications” that are consistent with the Court’s Order
 21 Approving the Settlement Agreement, and “do not limit any substantive rights of the Settlement
 22 Class.” (Dkt. No. 147 at ¶ 14.) Second, the Court retained jurisdiction over the Settlement
 23 Agreement, to allow for these sorts of requests. (Id. ¶ 12.) Third, the Court finds that the five
 24

1 requested steps are an appropriate method of giving notice to and including the “Additional
2 Participants” in the settlement. However, the Court wishes to ensure that the “Additional
3 Participants” are given an express right to challenge the Settlement Agreement itself. That same
4 substantive right was afforded to the Settlement Class Members and under the terms of the
5 Settlement Agreement, they must be given that same substantive right. (See Dkt. No. 147 at ¶
6 14.)

7 The Court therefore ADOPTS the five-pointed proposal the Parties have submitted,
8 subject to the following: (1) the Court further requires the Parties to provide all “Additional
9 Participants” with information as to how to object to the Settlement Agreement consistent with
10 the previously-approved notices; (2) the notice to the “Additional Participants” shall indicate that
11 any objections to the Settlement Agreement must be filed with or mailed to the Court within 90
12 days of the date the notices are sent; (3) the notice to the “Additional Participants” shall also
13 indicate that any request to opt out of the Settlement must be mailed to the Administrator within
14 90 days of the date the notices are sent out, on the same terms specified in the original notice the
15 Court approved (see, e.g., Dkt. No. 136-2 at 8); (4) any funds remaining after the “Additional
16 Participants” are paid may only be sent to the Homer Fund after the Parties file a notice with the
17 Court of the amount unclaimed and the Court approves the payment; and (5) the notice to the
18 Court regarding the excess funds must be delivered within 30 days of the date the Administrator
19 completes payment to the “Additional Participants.”

20 The clerk is ordered to provide copies of this order to all counsel.

21 Dated April 2, 2024.

22 

23 Marsha J. Pechman
United States Senior District Judge
24